

2010 WL 7093242 (Miss.) (Appellate Brief)
Supreme Court of Mississippi.

Laura M. YARBROUGH, Appellant,
v.
Ann Morrison PATRICK, Appellee.

No. 2010-CA-00391.
July 8, 2010.

On Appeal from the Final Judgment of the Chancery Court of the First Judicial District of
Hinds County, Mississippi, Dated February 9, 2010, Honorable J. Dewayne Thomas-Chancellor

Appellant's Brief

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*1 STATEMENT OF THE ISSUES

I. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY HAVING PLACED THE BURDEN OF PROOF ON THE PLAINTIFF (APPELLANT) TO PROVE UNDUE INFLUENCE WHEN THE LAW PROVIDES THAT THERE IS A PRESUMPTION OF UNDUE INFLUENCE, AND THE BURDEN IS ON THE DEFENDANT (APPELLEE) TO MEET THE BURDEN OF PROOF ON MATTERS OF **TRUST** AND GIFTS INTER VIVOS.

II. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW FOR NOT HAVING FOLLOWED THE GUIDELINE MANDATED BY THE COURT REGARDING ELEMENTS FOR A GIFT INTER VIVOS.

STATEMENT OF THE CASE

*2 I.

STANDARD OF REVIEW

The Mississippi Supreme Court has long held that a Chancellor will not be reversed “when supported by subsatatal evidence unless the Chancellor abused his or her discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was used. *Kilpatrick vs. Kilpatrick* 732 So2d 876, 880 (Miss. 1999). A Chancellor's findings of fact will not be disturbed if substantial evidence supports those factual findings or unless the Chancellor was manifestly wrong or clearly erroneous. *Turnpin vs. Turnpin*, 699 So2d 560, 564 (Miss. 1997); where the Appellant Court disagrees with the lower court on the finding of fact and the erroneous legal standard was used and might have arrived at a different conclusion; the lower court's finding of fact will be reversed by the Appellant Court when the Chancellor's Findings were wrong, clearly erroneous, or a erroneous legal standard was applied. *Richardson vs. Riley*, 355 So2d 667,668 (Miss 1987).

II.

A. NATURE OF THIS CASE, COURSE OF PROCEEDINGS AND DISPOSITION OF THE COURT BELOW:

The Appellant, Laura Morrison Yarbrough, the Appellant and the Plaintiff in the trial court filed a Complaint in *3 the Chancery Court of the First Judicial District of Hinds County, Mississippi against her daughter, Ann Morrison Patrick, the Appellee herein, requesting that she return to her all of her real property and monies which she had previously held in Appellant's name only; the Appellee, daughter of Mrs. Laura Morrison Yarbrough, refused to return Mrs. Yarbrough's real property and cash assets claiming that they were a gift inter vivos by her mother to her. Mrs. Laura Morrison Yarbrough a **eldery** lady of 89 years of age testified that at no time did she every give her daughter all of her assets as a gift; that the transfer of her

assets had been done at the request of. Mrs. Ann Morrison Patrick in order that Mrs. Yarbrough would be eligible to receive Medicaid benefits. Mrs. Laura Yarbrough testified that her daughter had taken her assets with the understanding that she would be holding the assets in **trust** and that they would be returned to her upon her request and that when she died her estate would be distributed among all of her children.

The Chancellor, J. Dewayne Thomas, entered a Final Judgment in this cause and held that Mrs. Laura M. Yarbrough, did not prove a confidential relationship between herself and her daughter, and that Ann Morrison Patrick was not required to overcome the presumption of undue influence.

***4** A Notice of Appeal was filed by the Appellant with \$100.00 Supreme Court filing fee on March 5, 2010, Notice to trial court clerk was filed on March 5, 2010, Copy of Certificate of Compliance was filed with the Supreme Court on March 26, 2010; Court Reporter's transcript was filed with the Supreme Court on April 14, 2010 and Certificate of Compliance filed in compliance with Rule 11(d)(2) on April 14, 2010. The Appellant filed Motion For Additional Time To File Brief on June 14, 2010 and the Supreme Court entered an Order granting additional time to file Appellant's brief on June 15, 2010.

B. STATEMENT OF THE FACTS:

Laura Morrison Yarbrough (Appellant) is an **eldery** lady of eighty-nine years of age (TR-6); she stated that she was born in XX/XX/1920, and that she had previously been married to Taz Morrison (TR-6) and that she and her husband has four (4) children born of their marriage union, namely, Talmadge Morrison, Ann Morrison Patrick, Alethia Morrison Davis, and Keith Morrison. Mrs. Yarbrough stated that all of her children are now grown; that her husband Taz Morrison was deceased, and that she remarried Thomas Morrison who is also now deceased; that her daughter Ann Morrison married and is now Ann Morrison Patrick. (TR-7).

***5** Mrs. Laura Yarbrough, testified that she resides in the First Judicial District of Hinds County, Mississippi at 8724 Terry Road, Terry, Mississippi; that her son Keith Morrison lives next door to her and that her daughter Alethis Morrison Davis lives in her home with her. (TR-7) Mrs. Laura Yarbrough testified that owned her house and eight (8) acres of land at Terry, Mississippi, had two (2) lots of land in Jackson County, Mississippi and had approximately \$300,000.00 in certificates of deposit and in addition had a house full of furniture, a 1991 buick automobile and received a monthly social security check and a check from her daughter monthly in interest earnings from her Certificates of Deposit. (TR-8).

Mrs. Laura Yarbrough, stated that she had various bank accounts at different bank, Regions Bank, Trustmark Bank, (TR-10-11) and that all of these accounts were in her name only. (TR-11); Mrs. Laura Yarbrough testified that her daughter, Ann Morrison Patrick, wanted to put her name on her bank accounts and on her Certificates of Deposit (TR-13) and that Ann Morrison Patrick's name was not suppose to be on her bank account and her Certificate of Deposits (TR-13); she stated that the \$300,000.00 which she had in CD were from her former husband, Taza Morrison's estate. (TR-14).

***6** Mrs. Laura Yarbrough testified that her daughter, Ann Morrison Patrick, had advised her that she needs to transfer all of her assets, land and Certificates of Deposit to her name (Ann M. Patrick), so that she would be eligible to receive Medicaid benefits. Mrs. Yarbrough stated.

“she promised me if I'd get--if I'd sign everthing I had over to her she would get me on Medicaid. (TR-15).

Mrs. Laura Yarbrough testified that her Certificates of Deposit was not suppose to have Ann Patrick's name on them, “that not my doing” (R-16)

Laura Yarbrough testified that she had made a Last Will and Testament dated October 7, 1999 (TR-18) and that under her Will she was leaving each child a portion of her estate; that in addition, she had established a **trust** for her daughter Alethia Morrison

Davis, due to her disability. (Tr-18); she further stated, that her daughter, Mrs. Ann Patrick took the original of her Will from her safe deposit box and would not return it to her. (TR-17).

Mrs. Laura Yarbrough, state that she had two (2) lots on the Mississippi Gulf Coast in Jackson, Mississippi and that she never signed the deeds to the transfer of her property including the deed to her home at Terry, Mississippi, and that she never was at the office of the Notary Public or had ever met Mr. Farris Crisler II, until the taking of the deposition in this cause on May 26, 2009. (TR-23).

*7 Mrs. Laura Yarbrough, testified that she had made repeated request to her daughter to give her Will back to her as well as to return her property, lands and cash assets to her, but that her daughter, Ann M. Patrick, refused to return any of her property to her. (TR-24).

Under oath, Mrs. Laura Yarbrough, testified that she never gave anything to Ann Morrison Patrick as a gift. (R-26) and that it had been given to her to hold in **trust** so that she would be eligible for Medicaid. (TR-26).

On Cross-examination, Mrs. Laura Yarbrough, testified that she didn't know how Ann M. Patrick's name got on her Certificates of Deposit TR-34); she stated that Ann Patrick's attorney, Farris Crisler, had advised Mrs. Patrick to get everything out of Laura Yarbrough's name so that she could be eligible for Medicaid.

Mrs. Laura Yarbrough testified that she was telling the truth and requested that she be stricken dead if she was not telling the truth. (Tr-38)

Mrs. Laura Yarbrough denied that she had ever signed any of the deeds which her property had been conveyed to her daughter, Ann M. Patrick (R-39); she further denied that the signatures on the deeds were not hers. (TR-39). She testified that she did not go to the bank and have Ann Patrick's name *8 put on her Certificates of Deposits, and that she wanted all of my stuff put back in her name like it was. (Tr-39).

Mr. Keith Morrison, testified that he was one of the sons of Mrs. Laura Yarbrough and the brother of Ann M. Patrick. He testified that he lived next door to his mother, Laura Morrison Yarbrough, in Terry, Mississippi and that his sister Alethia Morrison Davis lived in his mother's house with his mother. (R-44).

Keith Morrison testified that he was familiar with his mother, Laura M. Yarbrough's, business affairs and that he was present and heard to a conversation between his sister, Ann Morrison Patrick and his mother, Laura M. Yarbrough and heard Mrs. Ann Patrick state that she wanted to get his mother on Medicaid. (TR-45)

Keith Morrison testified that he had heard his sister Ann Patrick tell his mother, "don't worry about it, she was going to get mother on Medicaid". (TR-47) Keith told his sister that "you can't if you have got property in your name". Ann Patrick stated to him she was going to get her on Medicaid. (TR-47).

Keith Morrison stated that he receives the mail for his mother, Laura Yarbrough, and that her bank statements started coming in both Mrs. Laura Yarbrough and Ann Patrick's name. (TR-50).

*9 The Court made an inquiry as to whether or not Mrs. Ann Patrick had declared any of the property as a gift on her income taxes (TR-56);

Mrs. Ann Morrison Patrick, stated that her mother, Laura Yarbrough, had put her name on all of her CDs that had previously been in her name (Laura Yarbrough) name only. (TR-60).

Mr. Ann Patrick stated that her mother “had turned them over to me” (R-61) and that after that point every time one would come due I would try to shop around and get the best rate for it that I could”. (TR61). She testified that she and her mother would go to the bank together until such time as all of her CD had been put in Ann Patrick's name only. (TR61).

Mr. Ann Morrison Patrick, testified that her mother, Laura Morrison Yarbrough, had given her all of her CDs as a gift. (TR-62).

Mrs. Ann Patrick, stated that she would drive her mother to her doctor's appointment and prepare her medicine and look after her after she had a stroke. (TR-63).

Mrs. Patrick testified that the reason that Mrs. Yarbrough want to transfer all of her property to Ann Patrick was because she was tired of “paying taxes”. (TR71).

Mrs. Ann Patrick testified that she had her mother's *10 original Last Will and Testament and that she refuses to give it back to her mother because she already had a copy of it. (TR-76).

Mrs. Patrick admitted that she was the named executrix under her Mother's Last Will and Testament, and in accordance with the terms of her mother's Will she had the authority to buy, sell, mortgage and exchange Mrs. Yarbrough's assets. (TR-79).

Mrs. Ann Patrick could not identify a single individual that could verify the fact that her mother mother, Laura M. Yarbrough had given her all of her property as a gift. (TR-80).

Mrs. Ann Patrick testified that she had over the past years given her mother checks in various amounts, but denied that she had led her mother to believe, that this was the interest on her Certificates of Deposit. (TR-96).

Mrs. Ann Patrick, put Mrs. Barbara Carita on the witness stand to testify on her behalf regarding the transfer of Mrs. Laura Yarbrough's certificates of deposit to the name of Ann Patrick only. (TR-106). Mrs. Barbara Carita, testified that she worked at Trustmark National Bank at Byram, Mississippi where Mrs. Laura Yarbrough had her CDs, but had no knowledge whatsoever concerning the changing of or taking Mrs. Laura Yarbrough's name off of her CDs and putting them in the name of Ann Patrick only.

*11 Mrs. Barbara Carita, stated that where the Certificate of Deposit is in “or”, “either or”, any one of them could come in and change it. (R-104)., she testified that she remember Mrs. Yarbrough's CDs becomming due several time but could not remember any conversation with her regarding her CDs. (TR-105).

ARGUMENT

I. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW BY HAVING PLACED THE BURDEN OF PROOF ON THE PLAINTIFF (APPELLANT) TO PROVE UNDUE INFLUENCE WHEN THE LAW PROVIDES THAT THERE IS A PRESUMPTION OF UNDUE INFLUENCE, AND THE BURDEN IS ON THE DEFENDANT (APPELLEE) TO MEET THE BURDEN OF PROOF ON MATTERS OF **TRUST AND GIFT INTER VIVOS.**

The Appellant, Mrs. Laura Yarbrough, contends that she did in fact have a confidential relationship with her daughter, and that the trial Court erred in not having found from the evidence presented by the evidence presented as well as the testimony of all of the witnesses as well as the testimony of the Appellee, Ann Morroson, that such a relationship did in fact exist.

Black's Law Dictionary (seventh edition) define the same as being a “fiduciary relationship”.

“A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of their relationship...”

***12** (1) “A relationship in which one person places **trust** in the faithful intergrity of another, who as a result gains superiority or influence over the first.”

(2) “where one person assumes control and responsibility over another.”

The Supreme Court of Mississippi has defined a confidential relationship as a relationship between two people in which one person is in a position to exercise dominant influence upon the other because of the latter's dependency of the former arising either from weakness of mind and body, or through **trust**. *In re Estate of Reid* 825 So2d 1, 5 (Miss. 2002). (quoting *Hendricks vs. James*, 421 So2d 1031, 1041 (Miss 1982)

The Appellee, Ann Patrick, the daughter of the Appellant, Laura Yarbrough, that she drove her mother to the doctor, attend to her mother's medicine and make sure that she was taking her medicine properly; that she would purchase food for her mother, and go to the bank with her mother and would from time to time provide her mother with money. (TR-62).

The Mississippi Supreme Court in *In Re Estate of Summerline*, 989 So. 2d 466 (2008) provided that there are certain elements to constitute an inter vivos gift, and that where a confidential relationship exists, there is a presumption of undue influence concerning inter vivos gift. The Court went further to provide the elements of this proposition:

- *13** 1. Whether one person has to take care of another.
2. Whether one person maintains a close relationship with another.
3. Whether one person is provided transportation and has taken to their medical care provider by another.
4. Whether one person maintains joint accounts with another.
5. whether one is of advance age or poor health.
6. Whether one is physically or mentally weak.
7. Whether there exist a power of attorney between the one and the other.

In applying the Court's standards to the case now before this Court, each of the aforesaid elements would be answered as follows:

- | | | |
|-----|------|---|
| (1) | Yes- | Appellee (Ann Patrick) admits that she did in fact drive her mother to the doctor, looked after her medicine, purchased food for her and took care of her banking TR-62) |
| (2) | Yes- | Appelle (Ann Patrick) is the daughter of Appellant (Laura Yarbrough)- |
| (3) | Yes- | Ann Patrick testified at trial that she drove her mother for medical care. |
| (4) | Yes- | Ann Patrick's name was on her mother's checking account and CDs, as a joint acct. |
| (5) | Yes- | Mrs. Laura Yarbrough is 89 years of age. |
| (6) | Yes- | Mrs. Laura Yarbrough is 89 years of age and has physical and mental weakness. |
| (7) | Yes- | Even though there was not an actual power of attorney per se; Ann Patrick the Appellee maintained that her mother had named her as the Executrix under her Will and she had authority as executrix to buy, sell, mortgage and exchange her mother's assets. |

***14** The Chancellor was in error in not having considered each of the standards set forth by this Court, and if he would have done so, he would have clearly reached a different finding in the Court below. The Appellant now respectfully request the Appeal Court to make the same application of the evidence to these standards and find that the Chancellor was in error.

The Supreme Court further stated in *Summerlin, Id.* that where a confidential relationship exist between two individuals, a presumption of undue influence is found to exist, the burden shifts to the beneficiary of gift to disprove the presumption of undue influence by clear and convincing evidence.

To further the Appellant's argument supporting the facts and the evidence presented by the sworn testimony of the witnesses for both the Appellant and the Appellee, the Appellant would cite from the record of this case.

Mrs. Ann Patrick, the daughter of Laura. Yarbrough, stated that she drove her mother to the doctor (Tr-62); that she oversaw her mother's medicine and prepared her medicine box (Tr-62); Mrs. Laura Yarbrough, her daughter Ann Patrick, her son Keith Morrison, and Mrs. Barbara Carite from Trustmark National Bank, all testified that Mrs. Yarbrough's Certificates had been placed in the names of "both" Laura Yarbrough and Ann Patrick, and not in Ann Patrick's name only, Mrs. Carite ***15** testified, that at that point Mrs. Laura Yarbrough, still owned an ownership interest in the Certificates of Deposit. (TR-103).

If this was the fact, it would show that there was not a gift given to Mrs. Ann Patrick at the time she alleges her mother gave her all of her assets including her CDs.

Due to the fact, that the CDs had "either" or "OR" on the CDs, Ann Patrick merely took advantage of the situation over the next several years as the CDs matured and placed them in her name only, and now claims exclusive ownership thereof.

Mrs. Laura Yarbrough throughout the trial of this cause maintained that she had at no time given Ann Patrick a gift of her property and Certificates of Deposit.

Mrs. Ann Patrick, the Appellant could not identify a single individual who could verify or support her testimony that her mother has given her all of her property as a gift.

The Appellant, Laura Yarbrough's as a live witness stated that at no time did she ever give her daughter a gift of all of her property and of her Certificates of Deposit.

Due to the fact that the CDs were placed in both names would in itself reflect the fact that Mrs. Yarbrough wanted to maintain ownership interest in the CDs.

***16 II. WHETHER THE TRIAL COURT ERRED AS A MATTER OF LAW OF NOT HAVING FOLLOWED THE GUIDELINE MANDATED BY THE COURT REGARDING THE ELEMENTS FOR A GIFT INTER VIVOS.**

The Chancellor at the trial of this cause failed to consider the guideline mandated by the Mississippi Supreme Court regarding the elements concerning a gift inter vivos. *Matter of Collier*, 381 So2d 1338 (Miss. 1980); *In Re Estate of Ladner*, 909 So2d 1051 (Miss. 2004).

The Court stated that the elements of an inter vivos are as follows:

1. A donor is competent to make a gift.
2. A voluntary act of the donor with donative intent.

3. The gift must be complete with nothing else to do.
4. There must be delivery to the donee, and
5. The gift must be irrevocable.

The dictionary states that a “gift inter vivos” is an effective gift made during the life of the donor. By a gift inter vivos, property vests *immediately* in the donee at the time of delivery.

It is clear from the evidence presented in the trial of this cause and the testimony of all of the witnesses including the Appellee herself; that the the CDs did not immediately vest in the name of Ann Patrick only and that *17 Ann Morrison merely took advantage of her name and her mother's having an account “either” “or”, and as the CDs matured, had them placed in her name only. This evidence is undisputed.

Mrs. Laura Yarbrough, the Appellant, is a live witness and is presently eight-nine (89) years of age; and was eighty-two (82) years of age when her daughter transferred Mrs. Yarbrough's property and added her name on her mother's Certificates of Deposit; she was without a doubt of advance age, and that her daughter took advantage of this situation by convincing her mother that in order to be on or receive medical treatment or care under Medicaid; all of her property would have to be put in Ann Patrick's name. The testimony of both Mrs. Laura Yarbrough and her son, Keith Morrison, who is the brother of Ann Patrick, testified under oath, that this was the conversation between Ann Patrick and her mother. (TR-26) and Keith Morrison's testimony at (TR-45).

The Mississippi Supreme Court, in *Summerline*. ID further stated, that the recipient of the gift must show:

- (a) good faith on the part of the beneficiary.
- (b) the grantor's full knowledge and deliberation of the consequences of her actions, and
- (c) the grantor's independent consent and action.

*18 In the Case of *Allstate Life Insurance Co. vs. Estate of Reed*, 619 F. Supp 2d 262 (S.D. Miss 2007); the Court stated “A party attempting to prove under Mississippi law that an inter vivos gift was made, must show by clear and convincing evidence:

- (1) that the donor was competent to make a gift.
- (2) that the donation was a voluntary act and the donor had donative intent;
- (3) that the gift must be complete and not conditional;
- (4) that delivery was made; and
- (5) that the gift was irrevocable

The Mississippi Supreme Court held these same standards in *In Re Estate of Ladner*, 909 So2d 1051 (Miss, 2004); *Spencer vs. Hudspeth*, 950 So2d 238.

In 2009 this Court considered the case of *Estate of Laughter*, 23 So3d 1055, and held, as follows;

“One of the essential of a valid inter vivos gift is that the property *must be delivered* in such a manner that the donor *retains* “no control or dominion over it.” (Emphasis added). *Estate of Ladner*, 909 So2d 1051. (Miss. 2004).

In the Case now before this court, it is clear from the testimony of the witnesses as well as both the Appellant and the Appellee, Mrs. Laura Yarbrough did not relinquish control of her CDs, but merely added her daughter's name on the CDs with her as “either/or”; this within itself ment that Laura Yarbrough did retain control over her CDs.

***19** In the case now before this Court, the evidence and testimony of the witnesses, especially the live testimony of the donor herself, Mrs. Laura Yarbrough; the donee, Mrs. Ann Patrick, never came close to meeting the burden placed upon by the mandate of the court established in *Summerline*, Id. element (a) “good faith”, Mrs. Laura Yarbrough, repeatedly testified under oath she never at no time every gave her assets and property to her daughter Ann Patrick.

On at least two (2) occasions, she stated that she wisied that God would strike her dead if she was not telling the truth.

(b) Mrs. Yarbrough was 82 years of age and was led to believe by her daughter, that it would be in her mother's best interest to have her name placed on her assets with her, and as such the Appellee, Ann Patrick convienced her mother of the same and took advantage of the situation by eventually having all of her mother's assets converted to the daughter's name only.

The Appellant through her actions and efforts, at best created a constructive **trust** by which the the *Black's Law Dictionary* defines as:

“A **trust** imposed by a court on equitable ground against one who has obtained property by wrongdoing, thereby preventing the wrongful holder from being unjustly enriched.”

***20** The Mississippi Supreme Court has held that a Constructive **trust** is as follows:

“A constructive **trust** is one that arises by operation of law against one who, by fraud, actual or constructive by duress or abuse of confidence, by commission of wrong or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way, against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, to hold and enjoy.” *Allred vs. Fairchild*, 785 So.2d 1064 (Miss. 2001)

See also: *Union National Life Ins. Co. vs. Crosby*, 870 So2d 1175 (Miss. 2004)

In Re Administration of Estate of Abernathy 778 So2d 123 (Miss. 2001)

McNeil vs. Hester, 753 So2d 1057 (Miss.2000); *Estate of Horrigan*, 757 So2d 165 (Miss. 1999); *DeMyers vs. DeMyers* 742 So2d 1157; *Allgood vs. Allgood*, 473 So2d 416; *Russell vs. Douglas*, 138 So2d 730 (Hiss. 1962) *Griffin vs. Armana*, 687 So2d 1188, (Miss. 1996); *Sojourner vs. Sojourner*, 153 So2d 803 (Miss. 1963)

“A constructive **trust** arises, regardless of intention in order to prevent unjust enrichment.” *Bird vs. Stein*, 258 F2d 168, certiorari denied 79 S.Ct 698, 359 U.S. 926, 3 LEd.2d 628. CA, 5 (Miss. 1958).

“Implied **trust**” arises out of surrounding facts and is not normally evidenced by any writing. “*Simmons vs. Simmons*, 724 So2d 1954 (Miss. 1998) Purpose of implied **trust** is to prevent injustice that might otherwise occur if formal laws of title to property were to be strictly applied.” *Simmons*, Id.

The truth of the matter was that Mrs. Ann Patrick took advantage of her mother's **trust** and reliance upon her in order to obtain her mother's assets and to prevent her brothers and sister from sharing in their mother estate and provide in the mother's Will.

***21 CONCLUSION**

From the evidence and testimony of the various witnesses that testified in this matter at trial it is clear, that the Appellee, Ann Morrison Patrick, took advantage of her mother's advanced age, and mental and physical weakness under the guise or pretense of helping her mother while in fact she was helping herself to all of her mother's assets, including her house, lands and all of her cash in the bank and certificates, simply by having her name added to Mrs. Yarbrough's accounts; and over a period of time as the Certificates of Deposit would mature, she would simply have the same put in her name only.

The testimony of both Mrs. Laura Yarbrough and her son, Keith Morrison affirmed the fact that Mrs. Ann Patrick had advised her mother that in order to get on Medicaid, that she needed to transfer all of her property out of her name and put it in the name of her daughter; Ann Patrick. Mrs. Yarbrough stated that her daughter Ann Patrick advised that if she would sign everything I had over to her she would get me on Medicaid. (TR-15).

Mrs. Ann Patrick, the daughter of Mrs. Laura Yarbrough, could not present a single bit of evidence whatsoever to confirm the fact that her mother had given her all of her property as a gift.

***22** In fact Mrs. Ann Patrick's own witness at the trial of this cause at the lower Court, stated that she could not remember any conversation whatsoever where Mrs. Laura Yarbrough at the time Ann Patrick's name was added to Mrs. Yarbrough's CDs, that they were a gift to her.

In view of all of the facts and evidence which was presented at the trial of this cause as well as the argument now before this court, the Appellee, Mrs. Ann Patrick should not be allowed to get away with her wrong-doing; obtaining money or property under false pretense or fraud; and this Court has the duty and responsibility to the innocent to protect them from such abuse, especially individuals of advance age and of physical and mental weakness.

For all of the aforesaid, the Chancellor's ruling should be reversed.

WHEREFORE, PREMISES CONSIDERED, Appellant, Laura Morrison Yarbrough, respectfully request this Honorable Court to reverse the Chancery Court of the First Judicial District of Hinds County, Mississippi in this matter.